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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAN 10 2002

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

IN RE RIVER PARK SQUARE  
PROJECT BOND LITIGATION

No. CS-01-0127-EFS

ANSWER, AFFIRMATIVE  
DEFENSES AND COUNTERCLAIMS  
OF FOSTER PEPPER & SHEFELMAN  
TO CROSS-CLAIMS AND THIRD-  
PARTY CLAIMS OF THE CITY OF  
SPOKANE

I. ANSWER

Foster Pepper & Shefelman PLLC ("Foster Pepper") answers the Cross-Claims and Third-Party Claim of the City of Spokane as follows:

1.1-1.24 Denies the allegations of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23 and 1.24 for lack of information or knowledge sufficient to form a belief as to their truth or falsity.

1.25 Denies the allegations of paragraph 1.25 for lack of information or knowledge sufficient to form a belief as to their truth or falsity, except admits that Walker issued a "Feasibility Analysis" the contents of which are as stated therein.

1.26-1.76 Denies the allegations of 1.26, 1.27, 1.28, 1.29, 1.30, 1.31, 1.32, 1.33, 1.34, 1.35, 1.36, 1.37, 1.38, 1.39, 1.40, 1.41, 1.42, 1.43, 1.44, 1.45, 1.46, 1.47,

ANSWER, AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS OF FOSTER PEPPER &  
SHEFELMAN - 1

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**ORIGINAL**

1 1.48, 1.49, 1.50, 1.51, 1.52, 1.53, 1.54, 1.55, 1.56, 1.57, 1.58, 1.59, 1.60, 1.61, 1.62,  
2 1.63, 1.64, 1.65, 1.66, 1.67, 1.68, 1.69, 1.70, 1.71, 1.72, 1.73, 1.74, 1.75 and 1.76 for  
3 lack of information or knowledge sufficient to form a belief as to their truth or falsity.

4 1.77 Denies the allegations of paragraph 1.77 for lack of information or  
5 knowledge sufficient to form a belief as to their truth or falsity, except admits that the  
6 Washington Supreme Court issued an opinion in the matter of CLEAN v. City of  
7 Spokane which is reported at 133 Wn.2d 455, the holding of which is as stated therein.

8 1.78-1.80 Denies the allegations of paragraphs 1.78, 1.79 and 1.80 for lack of  
9 information or knowledge sufficient to form a belief as to their truth or falsity.

10 1.81 Denies the allegations of paragraph 1.81 for lack of information or  
11 knowledge sufficient to form a belief as to their truth or falsity, except admits that the  
12 Bonds were sold in September of 1998.

13 1.82-1.108 Denies the allegations of paragraphs 1.82, 1.83, 1.84, 1.85, 1.86,  
14 1.87, 1.88, 1.89, 1.90, 1.91, 1.92, 1.93, 1.94, 1.95, 1.96, 1.97, 1.98, 1.99, 1.100, 1.101,  
15 1.102, 1.103, 1.104, 1.105, 1.106, 1.107 and 1.108 for lack of information or  
16 knowledge sufficient to form a belief as to their truth or falsity.

17 2.1 Realleges and incorporates by reference its answers to paragraphs 1.1  
18 through 1.108, supra, in answer to paragraph 2.1.

19 2.2-2.13 Denies the allegations of paragraphs 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8,  
20 2.9, 2.10, 2.11, 2.12 and 2.13 for lack of information or knowledge sufficient to form  
21 a belief as to their truth or falsity.

22 2.14 Admits the allegation of paragraph 2.14 that the City of Spokane is  
23 seeking a determination of certain matters from the Court but denies that the City is  
24 entitled to any such determination.

25 2.15 Realleges and incorporates by reference its answers to paragraphs 1.1  
26 through 2.14, supra, in answer to paragraph 2.15.

1           2.16 Denies the allegations of paragraph 2.16 for lack of information or  
2 knowledge sufficient to form a belief as to their truth or falsity, except denies the  
3 allegations to the extent they pertain to Foster Pepper and admits that the City is  
4 seeking a certain determination of its duty from the Court to the extent it is asserting  
5 such claims herein.

6           2.17-2.27 Denies the allegations of paragraphs 2.17, 2.18, 2.19, 2.20, 2.21,  
7 2.22, 2.23, 2.24, 2.25, 2.26 and 2.27 for lack of information or knowledge sufficient to  
8 form a belief as to their truth or falsity.

9           2.28 Admits that the City purports to summarize in paragraph 2.28 certain  
10 determinations it seeks to have made by the Court but denies that the City is entitled to  
11 such determinations.

12           2.29 Denies the allegations of paragraph 2.29 for lack of information or  
13 knowledge sufficient to form a belief as to their truth or falsity.

14           2.30 Realleges and incorporates by reference herein its answers to paragraphs  
15 1.1 through 2.29, supra, in answer to paragraph 2.30.

16           2.31-2.34 Denies the allegations of paragraphs 2.31, 2.32, 2.33 and 2.34 for  
17 lack of information or knowledge sufficient to form a belief as to their truth or falsity.

18           2.35 Realleges and incorporates by reference herein its answers to paragraphs  
19 1.1 through 2.34, supra, in answer to paragraph 2.35.

20           2.36-2.39 Denies the allegations of paragraphs 2.36, 2.37, 2.38 and 2.39 for  
21 lack of information or knowledge sufficient to form a belief as to their truth or falsity.

22           2.40 Realleges and incorporates by reference herein its answers to paragraphs  
23 1.1 through 2.39, supra, in answer to paragraph 2.40.

24           2.41-2.43 Denies the allegations of paragraphs 2.41, 2.42 and 2.43 for lack of  
25 information or knowledge sufficient to form a belief as to their truth or falsity.  
26

1           2.44 Realleges and incorporates by reference herein its answers to paragraphs  
2 1.1 through 2.43, supra, in answer to paragraph 2.44.

3           2.45-2.53 Denies the allegations of paragraphs 2.45, 2.46, 2.47, 2.48, 2.49,  
4 2.50, 2.51, 2.52 and 2.53 for lack of information or knowledge sufficient to form a  
5 belief as to their truth or falsity, except denies the allegations of paragraph 2.53 that  
6 the City is entitled to rescission or reformation of Ordinance C-31823.

7           2.54 Realleges and incorporates by reference its answers to paragraphs 1.1  
8 through 2.53, supra, in answer to paragraph 2.54.

9           2.55-2.68 Denies the allegations of paragraphs 2.55, 2.56, 2.57, 2.58, 2.59,  
10 2.60, 2.61, 2.62, 2.63, 2.64, 2.65, 2.66, 2.67 and 2.68 for lack of information or  
11 knowledge sufficient to form a belief as to their truth or falsity.

12                           ANSWER TO THIRD-PARTY COMPLAINT  
13                           AGAINST THIRD-PARTY DEFENDANTS

14           By way of answer to the Third-Party Complaint Against Third-Party Defendant,  
15 Foster Pepper alleges that none of the claims therein are directed to Foster Pepper or  
16 make allegations against Foster Pepper such that an answer is required from Foster  
17 Pepper. To the extent that any answer is required by Foster Pepper, Foster Pepper  
18 denies all allegations in the Third-Party Complaint Against Third-Party Defendants  
19 for lack of information or knowledge sufficient to form a belief as to their truth or  
20 falsity.

21                           II. AFFIRMATIVE DEFENSES

22                   BY WAY OF FURTHER ANSWER, AND AS AFFIRMATIVE DEFENSES

23           Foster Pepper alleges as follows:

24           1.     Failure to State a Claim. The allegations of the City of Spokane against  
25 Foster Pepper fail to state a claim.  
26

1           2.     Statute of Limitations/Laches. The claims asserted by the City of  
2     Spokane against Foster Pepper herein are barred by the applicable statutes of  
3     limitation and/or corresponding equitable doctrines such as laches.

4           3.     Equitable Estoppel. The claims asserted by the City of Spokane against  
5     Foster Pepper are barred by the doctrine of equitable estoppel.

6           4.     Unclean Hands. The claims asserted by the City of Spokane for equitable  
7     relief are barred by the doctrine of unclean hands.

8                                 III. COUNTERCLAIM

9           BY WAY OF FURTHER ANSWER, AND AS A COUNTERCLAIM, Foster  
10     Pepper alleges as follows:

11          1.     Foster Pepper was retained to provide certain legal services to Prudential  
12     Securities, Inc., in connection with the sale of the Parking Garage Bonds. In the  
13     course of providing these legal services, Foster Pepper participated in certain meetings  
14     where various parties associated with the Bond offering discussed drafts of the  
15     Official Statement. Representatives of the City of Spokane were present for virtually  
16     every such meeting.

17          2.     One topic of discussion at these meetings was who would certify and take  
18     responsibility for the accuracy of statements made in various portions of the Official  
19     Statement. As a result of these discussions, the City of Spokane, through its City  
20     Attorney, and through its Special Counsel, undertook to represent in writing (the  
21     "Letter" or "Letters") that certain portions of the Official Statement accurately  
22     described the effect of an Ordinance No. C-31823 (the "Ordinance") passed by the  
23     City of Spokane.

24          3.     The sections of the Official Statement which the City warrantied to be  
25     accurate contained statements that the City "has pledged to make loans to the  
26     Authority from the City's parking meter revenues if and to the extent necessary to

1 enable the Authority to pay Fixed Ground Rent and Operating Expenses." The only  
2 qualification to this obligation, as described by the Official Statement, was that there  
3 be a "deficiency of Authority revenues to make such payments, and any such loans  
4 must be repaid from Authority revenues as described herein under 'SOURCES OF  
5 PAYMENT IN SECURITY FOR THE BONDS – Flow of Funds.'"

6 4. This express reference to the Flow of Funds section in the context of  
7 discussing whether there was a deficiency in Authority revenues and the obligation to  
8 repay any loans, constituted an incorporation of the Flow of Funds description into the  
9 portion of the Official Statement which the City certified as accurate. Indeed, absent  
10 this incorporation, it would not be possible to understand the exact meaning of the  
11 sections of the Official Statement which the City certified as accurate. The City's  
12 warranty of the accuracy of the Official Statement's description of the Ordinance thus,  
13 of necessity, relied upon and encompassed the expressly linked and closely-related  
14 Flow of Funds discussion.

15 5. The Flow of Funds discussion in the Official Statement clearly states that  
16 Fixed Facility Rent (i.e., interest on the Bonds) would be paid prior to Fixed Ground  
17 Rent and Operating Expenses. Representatives of the City of Spokane had access to  
18 this Flow of Funds description and were subjectively aware of its contents prior to  
19 issuing the Letters warranting that the Official Statement accurately described the  
20 Ordinance. Indeed, representatives of the City actually participated in negotiating the  
21 Flow of Funds provision in that it encompassed the repayment of loans of City  
22 parking meter revenues pursuant to the Ordinance.

23 6. Another topic raised during meetings to discuss drafts of the Official  
24 Statement was who would "buy-off" on the Walker Feasibility Analysis attached as  
25 Exhibit B to the Official Statement. In response, representatives of the City stated that  
26 the City would undertake to do so given that it had reviewed Walker's analysis, had

1 performed various alternative calculations using differing assumptions, and was  
2 comfortable with Walker's conclusions. Accordingly, the Bond Purchase Agreement  
3 was amended to require that the City certify prior to closing that it was "familiar with  
4 the Feasibility Study and believed that the assumptions used therein are reasonable  
5 and that the projections set forth in the Feasibility Study and the Official Statement are  
6 reasonable." The City, in fact, provided such a certificate (the "Certificate"), dated  
7 September 24, 1998.

8 7. The City of Spokane understood that Foster Pepper was a member of a  
9 small group which would receive and rely upon the Letters and the Certificate.

10 FIRST CAUSE OF ACTION  
11 BREACH OF WARRANTY – THIRD-PARTY BENEFICIARY

12 8. Foster Pepper realleges and incorporates by reference the allegations of  
13 paragraphs 1-7, supra.

14 9. If the City obtains the relief sought in its declaratory judgment and  
15 reformation claim, the result would be to breach the representations and warranties  
16 given in the Letters by rendering them false and inaccurate. Foster Pepper was one of  
17 the intended beneficiaries of the Letters and will be damaged by any such breach.  
18 Accordingly, Foster Pepper is entitled to recover damages from the City in an amount  
19 to be proven at trial.

20 10. The City appears to take the position in its Answer, Counterclaim, Cross-  
21 Claims and Third-Party Claim that Walker's Feasibility Analysis came to  
22 unreasonable conclusions based on unreasonable assumptions. If such is the case,  
23 then the Certificate would be rendered false and inaccurate. Foster Pepper was one of  
24 the intended beneficiaries of the Certificate and will be damaged by any breach  
25 thereof. Accordingly, Foster Pepper is entitled to recover damages from the City in an  
26 amount to be proven at trial.

1                                    SECOND CLAIM – MISREPRESENTATION

2            11. Foster Pepper realleges and incorporates by reference the allegations of  
3 paragraphs 1-10, supra.

4            12. If the City's allegations herein regarding the meeting of the Ordinance are  
5 proven, the representations made in the Letter will be rendered inaccurate in a fashion  
6 indicating they were negligently, recklessly or fraudulently made. The City knew and  
7 understood that Foster Pepper was a member of a select group which would receive,  
8 review and rely upon the Letters. Foster Pepper will be damaged by any  
9 misrepresentation contained in the Letter and is thereby entitled to recover damages  
10 from the City in an amount to be proven at trial.

11           13. If Walker's Feasibility Analysis is proven to be based on unreasonable  
12 assumptions or proven to contain unreasonable projections, then the Certificate was  
13 negligently, recklessly or fraudulently made. The City knew and understood that  
14 Foster Pepper was a member of a select group which would receive, review and rely  
15 on the Certificate. Foster Pepper will be damaged by any misrepresentation contained  
16 in the Certificate and is thereby entitled to recover damages from the City in an  
17 amount to be proven at trial.

18                                    IV. PRAYER FOR RELIEF

19           WHEREFORE, having fully answered the Cross-Claim of the City, Foster  
20 Pepper requests that the Court grant it the following relief:

21           A. Entry of a final judgment dismissing the City's Cross-Claims against  
22 Foster Pepper with prejudice and without an award of damages or other relief.

23           B. Entry of a judgment against the City of Spokane for such damages as  
24 Foster Pepper may prove at trial on its counterclaim against the City.

25           C. An award of its reasonable fees and expenses incurred herein, including a  
26 reasonable attorneys' fee.



1 D. Such other relief as the Court may deem just.

2 DATED this 9th day of January, 2002.

3 BYRNES & KELLER LLP

4  
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the 9<sup>th</sup> day of January, 2002, a true copy of the foregoing pleading was served upon the following individuals via E-Mail and U.S. Mail:

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